

AMENDED IN ASSEMBLY MAY 12, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1159**

**Introduced by Assembly Member Bowen**

February 28, 1997

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An act to add Chapter 3.6 (commencing with Section 12125) to Part 2 of Division 2 of the Public Contract Code, relating to the Alternative Protest Bid Pilot Project.

LEGISLATIVE COUNSEL'S DIGEST

AB 1159, as amended, Bowen. The Alternative Protest Pilot Project.

Existing law requires the acquisition of electronic data processing or telecommunications goods and services to be conducted through competitive means, except when the Director of General Services determines that the goods and services proposed for acquisition are the only goods and services that can meet the state's need, or the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety.

This bill would establish the Alternative Protest Pilot Project to be administered by the Department of General Services as an alternative to existing protest procedures. This bill would authorize any state department or agency to use these alternative procedures, until December 31, 1999, with respect to contracts for which a protest has been filed if a majority of participating bidders or proposers sign an

agreement that they understand and agree to specified terms with regard to the protest filed.

This bill would require projects under this pilot project to meet the criteria of (1) the state agency or department stating its business needs and not the detailed specification in the request for bids, (2) the state agency or department has stated the criteria and weight to be given each criterion for the evaluation of contract proposals, (3) the bids being awarded based on “value-effective acquisition,” and (4) the bids being categorized into the bid categories of electronic data processing goods and services and telecommunications goods and services.

This bill would require the pilot project to continue until it has been applied to at least 10 contracts, each with a value over \$1,000,000, awarded on or before December 31, 1999, as specified.

This bill would require the Department of General Services to report to the Legislature regarding the pilot project, as specified. *This bill would provide that the pilot project would be considered a success if there is at least a 10-percent reduction in the number of frivolous protests filed with the department.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 3.6 (commencing with Section  
2 12125) is added to Part 2 of Division 2 of the Public  
3 Contract Code, to read:

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5 CHAPTER 3.6. THE ALTERNATIVE PROTEST PILOT  
6 PROJECT

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8 12125. There is hereby established the Alternative  
9 Protest Pilot Project to be administered by the  
10 Department of General Services.

11 12126. (a) Notwithstanding any other provision of  
12 law, any department or agency may use the alternative  
13 protest procedures outlined in this chapter for electronic



1 data processing and telecommunications goods and  
2 services project solicitations until December 31, 1999.

3 (b) To be eligible for this pilot project, a majority of  
4 participating bidders or proposers shall sign an  
5 agreement that they understand and agree that any  
6 protest filed may be resolved by one or more of the  
7 alternative procedures set forth in subdivision (c).

8 (c) Notwithstanding Sections 10345, 10378, and  
9 subdivision (h) of Section 12102, any bid protest  
10 conducted under this chapter shall include the following  
11 alternative procedures:

12 (1) The protest process shall not prevent the  
13 commencement of work in accordance with the terms of  
14 any contract awarded pursuant to this chapter.

15 (2) The Department of General Services shall review  
16 the protest within seven days of the filing date to  
17 determine if the protest is frivolous. If determined to be  
18 frivolous, the protest shall not proceed under this chapter  
19 until the vendor posts a protest bond in an amount not less  
20 than 10 percent of the full contract value.

21 (3) The Director of General Services shall issue a  
22 ruling within a period not to exceed 45 days from the date  
23 the protest is filed.

24 (4) Arbitration that can be binding, nonbinding, or  
25 binding with a financial cap, in accordance with  
26 procedures established by the Department of General  
27 Services, shall be the resolution tool.

28 (d) Grounds for all protests under this chapter shall be  
29 limited to violation of bid procedures in accordance with  
30 subdivision (h) of Section 12102 for electronic data  
31 processing and telecommunications.

32 (e) Any vendor that has filed a protest with the State  
33 Board of Control on any state government contract for  
34 electronic data processing or telecommunications goods  
35 or services with a value over one million dollars  
36 (\$1,000,000) in California within the preceding fiscal year  
37 shall not be eligible to participate in the alternative  
38 protest pilot project.

1 12127. Notwithstanding any other provision of law,  
2 projects under the pilot project shall meet the following  
3 criteria:

4 (a) The agency or department has stated its business  
5 needs and not detailed specification in the request for  
6 bids.

7 (b) The agency or department has stated the criteria  
8 and the weight to be given to each criterion by which it  
9 will evaluate all proposals.

10 (c) The contract shall be awarded based on  
11 “value-effective acquisition” as that term is defined in  
12 Section 12100.7.

13 (d) The bids shall be divided into two categories, with  
14 the specifications of each category to be determined by  
15 the Department of General Services. The bid categories  
16 shall be as follows:

17 (1) Electronic data processing goods and services.

18 (2) Telecommunications goods and services.

19 12128. The pilot project shall continue until it has  
20 been applied to at least 10 contracts, each with a value  
21 over one million dollars (\$1,000,000), awarded on or  
22 before December 31, 1999, categorized by the  
23 Department of General Services as electronic data  
24 processing or telecommunications goods and services.  
25 The Department of General Services may reduce the  
26 number of contracts that must comply with this section  
27 by the number of contracts awarded pursuant to  
28 Executive Order W-123-95.

29 12129. Notwithstanding Section 7550.5, the  
30 Department of General Services shall report to the  
31 Legislature regarding the pilot project by July 31, 2000.  
32 The report shall include the following:

33 (a) The percentage of contracts awarded in the pilot  
34 project that were protested.

35 (b) The percentage of bids with a value over one  
36 million dollars (\$1,000,000) not in the pilot project that  
37 were protested.

38 (c) The percentage of contracts awarded under the  
39 pilot project that were subsequently challenged in a court  
40 of law.

1 (d) All costs of a protest subject to subdivision (b) of  
2 Section 12126 from the original date filed, until final  
3 resolution. This shall include all costs associated with a  
4 successful protest and commencement of work under  
5 subdivision (b) of Section 12126 from the original date  
6 filed, until final resolution.

7 *12130. The pilot project shall be considered a success*  
8 *if there is at least a 10-percent reduction in the number*  
9 *of frivolous protests filed with the Department of General*  
10 *Services.*

